

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

CARLOS LEVY,

Petitioner,

v.

DAVID MILLS, Warden,

Respondent.

No. 1:10-00005

Judge Haynes

DENIED
This motion is
DENIED without prejudice
to renew. The Federal Public
Defender is appointed to
represent petitioner and is
given 60 days to file an
amended petition
if necessary.

MOTION TO DISMISS

The respondent, David Mills, Warden, moves this court pursuant to Fed. R. Civ.

P. 12(b)(6) to dismiss the petition for writ of habeas corpus in the above referenced case

on grounds that it was filed outside the one-year statute of limitations applicable to federal habeas applications.¹ 28 U.S.C. § 2244(d)(1). In support of this motion, the respondent relies upon the pleadings in this case, the memorandum of law filed in support of this motion, and the following portions of the state-court record submitted as attachments hereto, specifically:

¹Although Fed. R. Civ. P. 12(b)(6) does not expressly include a defense based on statute of limitations, the Sixth Circuit has held that the defense may be raised by motion to dismiss when it is apparent on the face of the complaint that the time for filing the complaint has passed. *Hoover v. Langston Assocs., Inc.*, 958 F.2d 742, 744 (6th Cir. 1992). Respondent submits that petitioner's pleadings in this case, particularly the statement of relevant dates and events triggering the applicable statute of limitations, establish the defense asserted in respondent's motion.